

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NYUTU K. WOODS,

Petitioner,

vs.

DWIGHT D. NEVENS,

Respondents.

Case No. 2:10-CV-00971-KJD-(RJJ)

ORDER

Petitioner has submitted a motion to correct an illegal sentence (#1) pursuant to Nev. Rev. Stat. § 176.555 and a motion to reduce sentence (#2). Petitioner has not paid the filing fee for this action, nor has he submitted an application to proceed in forma pauperis. Furthermore, petitioner seeks relief pursuant to a provision of state law. Petitioner's sole method of relief in federal court from a judgment of conviction in state court is through a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). The court will not construe the motion to correct an illegal sentence as a petition for a writ of habeas corpus because the motion lacks the information required for a habeas corpus petition. Additionally, petitioner had filed a habeas corpus petition in this court earlier, Woods v. Neven, Case No. 2:07-CV-01389-LRH-(RJJ). The court dismissed that action as untimely, and both this court and the Court of Appeals for the Ninth Circuit denied a certificate of appealability. Petitioner needs to obtain permission from the court of appeals before he can file another habeas corpus petition in this court. See 28 U.S.C. § 2244(b). See also McNabb v. Yates, 576 F.3d 1028, 1030

1 (9th Cir. 2009) (untimely petition counts as first petition for purposes of § 2244(b)). Under these
2 circumstances, the court will dismiss the action.

3 IT IS THEREFORE ORDERED that the motion to correct an illegal sentence (#1) is
4 **DENIED**.

5 IT IS FURTHER ORDERED that the motion to reduce sentence (#2) is **DENIED**.

6 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice. The
7 clerk of the court shall enter judgment accordingly.

8 DATED: September 29, 2010



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11 KENT J. DAWSON
United States District Judge
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